IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 5257

LOU BERTHA LABINE, NATURAL TUTRIX OF MINOR CHILD, RITA NELL VINCENT,

Appellant,

v.

SIMON VINCENT, ADMINISTRATOR OF THE SUCCESSION OF EZRA VINCENT,

Appellee.

APPEAL FROM THE SUPREME COURT OF LOUISIANA

BRIEF ON BEHALF OF APPELLANT

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OPINIONS BELOW

The opinion of the Court of Appeal, Third Circuit, State of Louisiana, is reported at 229 So. 2d 449 (1970), and the denial of the application to the Louisiana Supreme Court for a writ of certiorari is reported at 231 So. 2d 395 (1970).

JURISDICTION

The judgment of the Court of Appeal, Third Circuit, State of Louisiana, was entered on December 18, 1969, and a petition for rehearing was denied on January 7, 1970. The petition for a writ of certiorari was denied by the Supreme Court of the State of Louisiana on February 27, 1970. Notice of appeal was filed on May 13, 1970. The Supreme Court of the United States has jurisdiction to review by direct appeal the decree complained of by the provisions of 28 USC, Section 1257(2).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The constitutional provisions that are involved consist of Amendment XIV, Sec. 1 to the United States Constitution, as follows:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The Louisiana statutes that are involved are the following articles of the Louisiana Civil Code of 1870:

Articles 178, 202, 206, 886-892, 902, 911-914 and 919

These articles of the Louisiana Civil Code are set forth in full in Appendix A. Specifically, these articles establish different classes of children and deny inheritance rights to illegitimate children except in certain narrow circumstances where there are no other claimants whatsoever to decedent's estate.

QUESTIONS PRESENTED

Articles 178, 202, 206, 886-892, 902, 911-914 and 919 of the Louisiana Civil Code of 1870 establish different classes of children and except in very narrow cases and only where there are no other claimants to a decedent's estate, an illegitimate child is denied inheritance simply because of his illegitimacy. The principal questions presented are:

A. Can an illegitimate child, duly acknowledged by her father, be completely denied any inheritance merely because of her status as an illegitimate in contravention of the due process and equal protection clauses established under the Fourteenth Amendment to the United States Constitution?

B. Are Articles 178, 202, 206, 886-892, 902, 911-914 and 919 of the Louisiana Civil Code unconstitutional and violative of the Fourteenth Amendment to the United States Constitution by virtue of their establishment of different classes of children and denial of inheritance rights to illegitimate children?

C. Do the holdings of the United States Supreme Court in the cases of *Levy v. Louisiana*, 88 S. Ct. 1590, 391 U.S. 68, 20 L. Ed. 2d 436 (1968) and *Glona v. American Guaranty & Liability Insurance Company*, 88 S. Ct. 1515, 391 U.S. 73, 20 L. Ed. 2d 444 (1968) apply equally to illegitimate children claiming property and inheritance rights as well as to illegitimate children and parents claiming property rights by virtue of wrongful death actions?

STATEMENT OF THE CASE

This case involves a destitute Negro child, Rita Nell Vincent, who was born out of wedlock. The child was acknowledged by notarial act by Ezra Vincent, her father, to be his child and he left a substantial estate. Under Louisiana law, if the child had been legitimate, she would have inherited Ezra Vincent's entire estate since she was his only child. However, the child's claim to the estate through her tutrix was dismissed by the trial court. The decedent, Ezra Vincent, was not married at the time of his death and left no ascendants but left collateral relations who laid claim to his

estate claiming to be his legitimate collateral relations. He left no legitimate descendants. An administration was opened by decedent's collateral heirs. The decedent, Ezra Vincent, died intestate.

On the trial of the cause, it was developed by plaintiff's exhibits that the child, Rita Nell Vincent, was definitely the child of the decedent, Ezra Vincent. The child's birth certificate (Exhibit P-2; A. 7) which was duly received in evidence (R. 61) establishes that the child, Rita Nell Vincent, was the daughter of Ezra Vincent and Lou Bertha Patterson (now Labine). Conclusive evidence of the paternity of the child, Rita Nell Vincent, by decedent, Ezra Vincent, is contained in Exhibit P-3 (A. 8) which was duly received in evidence (R. 61), being the acknowledgement of paternity by notarial act duly executed by both Ezra Vincent and Lou Bertha Patterson (now Labine) and filed for record in the Division of Public Health Statistics of the Louisiana State Board of Health in accordance with law.

On the other hand, the collateral heirs who lay claim to decedent's estate had great difficulty in proving their own relationship to the decedent. For example, none of the witnesses, other than the immediate family, were able to recite the names of all of the brothers and sisters of Ezra Vincent. See, e.g. testimony of Muriel Rigmaiden called as a witness by the defendant (A. 22, 23), testimony of Lenon Braxton called as a witness by the defendant (A. 24, 25, 26), Edgar Mouton called as a witness by the defendant (A. 27, 28, 29). In fact, even the surviving brothers and sisters of decedent were unable to establish by their own testimony or any supporting documents that their mother and father were actually married or that they were the legitimate collateral relations of the decedent, Ezra Vincent. See testimony of Wilbur Vincent called as a witness by the defendant (A. 18-21), cross-examination of Ralph Vincent called as a witness by defendant (A. 30, R. 130-131). This testimony reveals a great deal of confusion concerning the circumstances, if any, of the marriage of the mother and father of the decedent and the decedent's brothers and sisters. Nevertheless, the lower court ruled

that the collateral relations inherited the decedent's entire estate, apparently basing this ruling on a finding that the collateral heirs proved their legitimate relationship by reputation. Nevertheless, this proof was sketchy, to say the least. In fact, the best documented relationship between the decedent and any other claimant was the well documented paternity by the decedent of the illegitimate child, Rita Nell Vincent, who was denied any recovery whatsoever in the case.

Not only did the Louisiana courts refuse any inheritance rights to the illegitimate child but even refused alimony from the estate for her support under that provision of the Louisiana Civil Code which provides that an estate of the deceased father of an illegitimate child must contribute reasonable alimony for the child's support. Articles 240 and 241 of the Louisiana Civil Code. Louisiana courts based their holding on the grounds that the United States government was amply supporting the child with Sixty and 00/100 ($60.00) Dollars per month social security payments and Forty and 00/100 ($40.00) Dollars per month Veterans' Administration payments. This holding was in spite of the fact that the evidence adduced in the court below showed that the child required at least One hundred ninety-two and 30/100 ($192.30) Dollars per month to survive. (A. 13-15)

The upshot of petitioner's case in the state courts was that the little child, Rita Nell Vincent, should be granted the same rights as any other child since it was not her fault that she was born an illegitimate. Since the Louisiana Codal Articles involved at least granted the child the right to claim alimony for her support as an illegitimate, she asked for this as an alternative plea, but the state courts ruled that the total payments by the United States government of One hundred and 00/100 ($100.00) Dollars for her support precluded her right to even claim bare subsistence from her father's estate. A review of the record will reveal that the fact that the denial of equal protection and due process to this child by the Louisiana inher-

itance statutes was violative of the Fourteenth Amendment to the United States Constitution was raised in the trial court, the Third Circuit Court of Appeal and the Louisiana Supreme Court, but all ruled in favor of their validity.

ARGUMENT

I.

DOES THE DENIAL OF INHERITANCE TO THIS ILLEGITIMATE CHILD VIOLATE THE DUE PROCESS AND EQUAL PROTECTION CLAUSES OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION?

The United States Supreme Court has ruled that the discrimination against illegitimates as practiced in Louisiana under our wrongful death statute (Article 2315 of the Louisiana Civil Code of 1870) constituted a denial of equal protection and due process under the Fourteenth Amendment to the United States Constitution. See *Levy v. Louisiana*, supra and *Glona v. American Guaranty & Liability Insurance Company*, supra. This court in *Levy* and *Glona* recognized that legitimates and illegitimates are indistinguishable with respect to such factors as biological origin, citizenship responsibility and the intimate familial relationship between a parent and his child.

The following cases have held that an illegitimate parent must contribute to his child's support even in the absence of a statute requiring such support, on the rationale that a discrimination between legitimate and illegitimate children is unconstitutional. See *R- v. R-*, 431 S.W. 2d 152 (S.Ct. of Missouri 1968); *Storm v. None*, 291 N.Y.S. 2d 515 (1968). As was observed by the court in *Haley v. Metropolitan Life Insurance Company*, 434 S.W. 2d 7 at Page 13, quoting from earlier cases:

> "Society is becoming progressively more aware that children deserve proper care, comfort, and protection even if they are illegitimate. The burden of illegitimacy in purely social relationships should be enough, without society adding unnecessarily to the

> burden with legal implications having to do with the care, health, and welfare of children . . .
>
> "Modern society shrinks from application of the Old Testament (Exodus 20) commandment 'visiting the iniquity of the fathers upon the children'. Rather we accept that more humanitarian view stated by Judge Leon Yankwich, that 'there are no illegitimate children, only illegitimate parents.'"

To the obvious counter argument that the granting of inheritance rights to an illegitimate child would wreak havoc and create chaos in land titles, suffice it to say that the case before this court is a classic repudiation of that canard. In this case, collateral relations who came from as far away as Washington, D.C. to lay claim to decedent's estate in Louisiana were unable to show a single shred of documentary evidence of their relationship to decedent. None of them could produce any birth certificates nor, in fact, could anyone produce decedent's birth certificate. There was no proof of a marriage of decedent's mother and father nor was there any proof except reputation proof of the fact that decedent's collateral relations were, in fact, what they claimed to be. The reputation proved extremely sketchy since none of the reputation witnesses could recite the names of all of decedent's brothers and sisters, yet the lower court held that decedent's brothers and sisters had proven their relationship and that the illegitimate child who had documentary proof of her relationship could inherit nothing because of her status.

Certainly there is no more rational basis for discriminating against a child because of illegitimacy (a factor of birth over which he has no control) than because of race. The fact is that discrimination against illegitimates rests on their lack of political strength. One out of every sixteen (16) persons in the United States is an illegitimate. Krause, *Bringing the Bastard into the Great Society - A Proposed Uniform Act on Illegitimacy*, 44 Tex. L.Rev. 829 (1969). However, contrary to popular opinion, bastards are noto-

riously under-represented in our legislatures and in our Congress. The burden of protecting them from arbitrary discrimination falls almost exclusively upon the courts.

The first principle of equal protection demands that the court open its eyes to clear evidence which proves that government has moved against a particular group with an "evil eye" or reckless disregard of their welfare. *Yick Wo. v. Hopkins*, 118 U.S. 356 (1886). The Constitution "nullifies sophisticated as well as simple minded modes of discrimination", *Lane v. Wilson*, 307 U.S. 268, 275 (1939) and our courts will not hesitate to cast aside even the most time honored formula espousing the ideal of equality once it is discovered the formula, in fact, fosters and perpetuates inequality. *Brown v. Board of Education*, 374 U.S. 483 (1954).

Basically, the only rational argument that can be made against allowing illegitimates to inherit centers around the question of proof, but the question of proof cannot be used as a shibboleth behind which an unconstitutional discrimination can hide. Rather, clear and convincing modes of proof may reasonably be required without discriminating against any particular class. A satisfactory, rational standard of proof of paternity must be set in the very state interest which Justice Harlan invokes in his dissenting opinion in the *Levy* and *Glona* cases, *supra.*—the interest "to simplify a particular proceeding by reliance on formal papers rather than a contest of proof." If such an interest had been present in our case rather than a discriminatory interest, the child, Rita Nell Vincent, would certainly have prevailed since she clearly established her relationship to the decedent while the discriminatorily favored collaterals struggled through to establish relationship through sketchy reputation evidence.

II.

ARE THE LOUISIANA CODAL ARTICLES INVOLVED VIOLATIVE OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION?

The Louisiana Codal Articles involved are Articles 178, 202, 206, 886-892, 902, 911-914 and 919 of the Louisiana Civil Code of 1870. They establish different classes of children and deny inheritance right to illegitimate children except where the only claimant to the decedent's succession is the state, thereby placing the illegitimate in the lowest possible class or category of human beings. These articles are set out in full in Appendix A annexed hereto. The basic constitutional guide lines to be followed in investigating state statutes on equal protection grounds were summarized in *Morey v. Doud*, 354 U.S. 457, 463-64 (1957):

> 1. The equal protection clause of the Fourteenth Amendment does not take from the state the power to classify in the adoption of police laws, but admits of the exercise of a wide scope of discretion in that regard, and avoids what is done only when it is without any reasonable basis and therefore is purely arbitrary.
>
> 2. A classification having some reasonable basis does not offend against that clause merely because it is not made with mathematical nicety or because in practice it results in some inequality.
>
> 3. When the classification in such a law is called in question, if any state of facts reasonably can be conceived that would sustain it, the existence of that state of facts at the time the law was enacted must be assumed.
>
> 4. One who assails the classification in such a law must carry the burden of showing that it does not rest upon any reasonable basis, but is essentially arbitrary. *Lindsley v. Natural Carbonic Gas Co.*, 220 U.S. 61, 78-79. To these rules we add the caution that "Discriminations of an unusual character especially suggest careful consideration to determine whether they are obnoxious to the Constitutional provision."

It is true that in Louisiana's legal system, property rights are closely tied to legitimate family relationships. However, it is recognized today sociologically that the denial of rights of an illegitimate child because of his status is an ineffective means to promote legitimate marriages and discourage promiscuity. See generally, H. Krause, *Equal Protection for the Illegitimate*, 65 Mich. L. Rev. 477, 492-95 (1967).

The argument that denying illegitimate children the right to recover is based on legitimate state interest in discouraging the bringing of children into the world out of wedlock must fall in light of the reasoning of this honorable court in the cases of *Levy* and *Glona*. No rational legislative purpose supports such discrimination. Admittedly, encouraging marriage is a valid legislative purpose, but the fault in that argument lies in the constitutional requirement that a fair connection exist between a statute and a valid purpose, between the status of the illegitimate under the law and his parents' conduct. As was stated by Harry D. Krause in his excellent article, *Legitimate and Illegitimate Offspring of Levy v. Louisiana - First Decision on Equal Protection and Paternity*, 36 University of Chicago Law Review, 338 at page 347:

> "If there is any connection (between the status of the illegitimate child under the law and his parents' conduct), it lies in the expectation that a potential mother will be so concerned about the treatment that awaits her illegitimate child at the hands of the law that she will adjust her conduct accordingly. The rising illegitimate birth rate tends to show that it is not likely that many potential illegitimate mothers are guided by this. But even if there were an effective relationship, it would not be permissible to punish an innocent nonparty for someone else's undesirable conduct."

The state of North Dakota has recognized the fact that its statute denying inheritance to illegitimates is clearly a denial of equal protection of the law. See *In re Estate of*

Jensen, 162 N.W. 2d 861 (S.Ct. of N.D. 1968). The court held at page 878 of that opinion:

> "Accordingly, . . ., we have no hesitancy in holding that (such statute) is unconstitutional as invidious discrimination against illegitimate children in violation of Section 1 of the Fourteenth Amendment of the United States Constitution and Section 20 of the North Dakota Constitution. This stature, which punishes innocent children for their parents' transgressions, has no place in our system of government, which has as one of its basic tenets, equal protection for all."

It should be pointed out that every United States jurisdiction (including the District of Columbia) except Louisiana allows an illegitimate child to inherit from his mother as though legitimate. Note, *The Court Acknowledges the Illegitimate*, 118 U. of Pa., L. Rev. 1, 24. Nineteen jurisdictions allow inheritance from the father's estate providing certain statutory requirements have been met. See Note, *Illegitimacy*, Brooklyn L. Rev. 45, 74-84 (1959). This places the main stream of American thought out of line with the early common law, in which, in Blackstone's words, "the incapacity of a bastard consists principally in this, that he cannot be heir to anyone, neither can be have heirs, but of his own body; for, being nullius fillius, he is therefore of kin to nobody, and has no ancestor from whom any inheritable blood can be derived." *I Blackstone, Commentaries on the Laws of England*, 481 (Kerr, London 1857). That common law rule or conclusive presumption is without foundation in fact. This distinction between legitimate and illegitimate children arose under the common law from the necessity in feudal times to assure land tenure, which was the basis of power and social stability. Since the creation of the rule, the conditions in society which required it have disappeared and the rule simply continues now as a source of great hardship and inequity.

Nonetheless, before this honorable Court strikes down the discrimination against illegitimates with respect to inherit-

ance rights, it is necessary to investigate once again whether the basis for the discrimination–the desire of the state to promote and protect the legal family unit and the certainty of property rights derived therefrom–is rational. The following observation from a Note, 43 Tulane L. Rev. 383 at page 392, is relevant:

> "It is acknowledged that there is a strong argument with respect to Louisiana law that the inferior status of illegitimates should be maintained since under the civil law, property rights are closely tied to legitimate family relationships. However, in the final analysis, it is submitted that there is no more rational basis for discriminating against the illegitimate under the law of successions than there was under the wrongful death and survival action situation in *Levy* and *Glona*. But even in the event that illegitimates are granted the substantive right of inheritance from their blood relatives, they will still have the procedural burden of proving the requisite family relationship."

It must once again be asked whether punishing innocent illegitimate children in their inheritance rights truly promotes the stability of legitimate family relationships. Statistics indicate otherwise. According to Campbell and Cowlig, *The Incidence of Illegitimacy in the United States*, 5 Welfare in Review 1, 4 (No. 5 May 1967), the number of illegitimate births per 1,000 in the year 1940 in the United States was 37.9. In the year 1965, it had risen to 77.4. Evidently, the creativity of the illegitimate parents was in no way hampered by the law's traditional denial of legal equality to their illegitimate children. In other words, life in all of its fullness has gone on in spite of the law's restrictions. Perhaps the parents should pay for the privilege of having illegitimate children, but to require the innocent children to pay for their illegitimacy is a denial of due process and equal protection and a clear reflection of a historical prejudice against illegitimates. Perhaps, too, the products of legitimate relationships are jealous of their unconstitution-

ally granted superiority in property rights and will not let the barriers down without the intervention of justice through the courts.

III.

DO THE LEVY AND GLONA HOLDINGS, SUPRA., APPLY TO PROPERTY RIGHTS AS WELL AS WRONGFUL DEATH ACTIONS?

The Louisiana courts in this case have erroneously held that the holdings of *Levy* and *Glona, supra,* were limited to interpretation of the wrongful death enactments in this state. There is no more a rational basis for assuming that marriage would be encouraged and illegitimacy discouraged by denying recovery for subsequent wrongful death than there is for assuming that marriage would be encouraged and illegitimacy discouraged by denying inheritance rights to illegitimate children. This is especially true in a case like the instant one in which the father of the illegitimate child went to the trouble of duly acknowledging the fact that the child was his own. In fact, the Court of Appeals, Third Circuit, State of Louisiana, which decided adversely to the little girl, Rita Nell Vincent's, rights in the instant case has subsequently granted inheritance rights to a duly acknowledged illegitimate child where the deceases parent's acknowledgment of paternity also included a statement of intent to legitimate the child. See *Succession of Saul Miller,* 230 So. 2d 417, (La. App. 1970).

It strains credulity to argue that the use of words of intention to legitimate a child would magically make this child superior to or different from a child whose parent subscribed a document acknowledging the truth and fact of his paternity of such a child. In this most recent Louisiana case, we have the strange situation of legitimacy being so sanctified that a mere declaration to that effect satisfies the law's desire to elevate such a child over one not so sanctified. There we see an important elevation of procedure into substance, of discrimination into concrete deprivation. In our case, the father, Ezra Vincent, bequeathed upon his

child, Rita Nell Vincent, procedural proof of his parentage, supported the child during his lifetime, and lived in the same family unit with her (A. 12-18) but failed to sanctify the child with the sacred words of legitimacy which the prejudice of our laws demand. There is no substantive difference between Rita Nell Vincent and the child involved in the *Succession of Saul Miller, supra.* Equal protection should be granted to the little girl in this case no matter what effect it might have on the succession laws of this and other states which deny equal protection and due process of law to such children.

Finally, if it be argued that the state has a right to differentiate between legitimates and illegitimates on the basis of the *presumed intent* of an intestate, it is clear that such discrimination constitutes unwarranted *state action* to deny equal protection and due process, although an individual might be allowed to so discriminate.

CONCLUSION

It is respectfully submitted that this honorable court should reverse the holdings of the Louisians courts in this case and should enter a decree declaring that Rita Nell Vincent is the lawful descendant of Ezra Vincent and as such, entitled to inherit his estate in the same manner as any other lawful descendant under the laws of Louisiana.

Respectfully submitted,

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APPENDIX A

Articles, Louisiana Civil Code of 1870

Article 178: Children are either legitimate, illegitimate, or legitimated.

Article 202: Illegitimate children who have been acknowledged by their father, are called natural children; those have not been acknowledged by their father, or whose father and mother were incapable of contracting marriage at the time of conception, or whose father is unknown, are contradistinguished by the appellant of bastards.

Article 206: Illegitimate children, though duly acknowleged, can not claim the rights of legitimate children. The rights of natural children are regulated under the title: *Of Successions.*

Article 886-892: 886: If there is no testament or institution is null or without effect, the succession is then open in favor of the legitimate heirs. by the mere operation of the law.

887: There are three classes of legal heirs, to wit: The children and other lawful descendants; The fathers and mothers and other lawful ascendants; and the collateral kindred.

888: The nearest relation in the descending, ascending or collateral line, conformable to the rules hereafter established, is called to the legal succession.

889: The propinquity of consanguinity is established by the number of generations, and each generation is called a degree.

890: The series of degrees forms the line; the series of degrees between persons who descend from one another is called direct or

lineal consanguinity, and the series of degrees between persons who do not descend from one another, but spring from a common ancestor, is called the collateral line or collateral consanguinity.

The direct line is divided into a direct line descending and a direct line ascending: The first is that which connects the ancestor with those who descend from him; the second is that which connects a person with those whom he descends.

891: In the direct line there are as many degrees as there are generations. Thus the son is with regard to the father, in the first degree, the grandson in the second, and vice versa with regard to the father and grandfather towards the sons and grandsons.

892: In the collateral line the degrees are counted by the generations from one of the relations up to the common ancestor exclusively, and from common ancestor to the other relations.

Thus brothers are related in the second degree; uncle and nephew in the third, degree; cousins german in the fourth, and so on.

Article 902: Legitimate children or their descendants inherit from their father and mother, grandfathers or other ascendants, without distinction of sex or primogeniture, and though they may be born from different marriages.

They inherit in equal portions and by heads, when they are in the same degree, and inherit by their own right; they inherit by roots, when all or part of them inherit by representation.

Article 911-914:

911: If a person dies, leaving no descendants, and his father and mother survive, his brothers and sisters, or their descendants, only inherit half of his succession.

If the father or the mother only survice the brothers and sisters, or their descendants, inherit three-fourths of his succession.

912: If a person dies, leaving no descendants nor father nor mother, his brothers and sisters, or their descendants, inherit the whole succession to the exclusion of the ascendants and other collarerals.

913: The partition of the half, the three-fourths or the whole of a succession falling to brothers and sisters, as mentioned to two preceding articles, is made in equal protions, if they are all of the same marriage; if they are of different marriages, the succession is equally divided between the paternal and maternal lines of the deceased, the german brothers and sisters take a part in the two lines, the paternal and maternal brothers and sisters, each in their respective lines only if there are brothers and sisters on one side only, they inherit the whole succession to the exclusion of all other relations of the other line.

In all these cases, the brothers and sisters of the deceased, or their descendants, inherit in their own right or by representation, as is regulated in the section which treats of representation.

914: When the deceased has died without descendants, leaving neither brothers or sisters, nor descendants from them, nor father nor mother, nor ascendants in the paternal

or maternal lines, his succession passes to his collateral relations.

Among the collateral relations, he who is the nearest in degree, excludes all the others, and if there are several in the same degree, they partake equally and by heads, according to their number.

Article 919: Natural children are called to the inheritance of their natural father, who has duly acknowledged them, when he has left no descendants nor ascendants, nor collateral relations, nor surviving wife, and to the exclusion only of the State.

In all other cases, they can only bring an action against their natural father or his heirs for alimony, the amount of whcih shall be determined, as is directed in the title: *Of Father and Child.*